

SENATE BILL 2604
By Person

AN ACT relative to physician peer review and to amend Tennessee Code Annotated, Title 63, Chapter 6, Section 221.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Title 63, Chapter 6, Section 221, is amended by adding the following language as a new section:

() In order to protect the health, safety, and welfare of Tennessee citizens, the general assembly declares it to be the public policy of this state to support and encourage professional societies or associations and their related charitable foundations, made up of individual licensed physicians to police their ranks for licensees who are impaired by alcohol, drugs, or emotional or mental illnesses. The general assembly recognizes that professional societies and associations are in the best position to learn of licensees, within each respective profession, who are so impaired, and to ensure that such individuals obtain the help they need before they harm their patients' interests. In order to ensure that such associations or their charitable foundations candidly, conscientiously, and objectively evaluate and review their peers' professional conduct, competence, and ability to practice without impairment by alcohol, drugs, or mental or emotional illnesses, it is imperative that professional assistance committees be given immunity from suit.

() As used in this section, professional assistance committee means any committee of a state or local medical association or society of licensees under Title 63, Chapter 6, including such society's duly elected or appointed impaired peer review or assistance committees, programs, malpractice support groups, and their staff personnel and agents, or a committee or program of such society's related charitable foundation or nonprofit corporation, the function of which, or one of the functions of which, is to evaluate and review their peers' professional conduct, competence, and ability to practice medicine without impairment by alcohol, drugs, or mental or emotional illnesses.

() All members, staff, and employees of a duly appointed professional assistance committee formed by a professional society or association of licensees under Title 63, Chapter 6, or a charitable foundation or nonprofit corporation related thereto shall be immune from suit for any cause of action arising out of any act, omission, or proceeding undertaken or performed in good faith and in furtherance of the committee's lawful purposes as stated and contemplated hereunder. With the exception of treating physicians and facilities, this immunity shall also extend to persons designated by such committees to monitor or supervise the course of treatment or rehabilitation of an impaired licensee, or a medical doctor eligible for license, or a medical student training for such license.

() A member of a professional assistance committee, employee or agent of such committee, or person reporting information to such a committee, is rebuttably presumed to have acted in good faith, and without negligence, recklessness, or malice. Any person alleging lack of good faith, or that a person acted with malice or gross negligence, has the burden to prove such conduct or omissions by clear and convincing evidence.

() In the event that any individual files suit against any professional assistance committee contemplated under this part, or any member, employee, or agent of such

committee, then that individual or entity shall bear the costs of such defendant committee's or individual defendant's litigation and attorneys fees, if that plaintiff fails to prevail in the litigation with a final judgment in the plaintiff's favor, or if the court determines on motion or otherwise that the plaintiff's claim was frivolous, unreasonable, without foundation, or brought in bad faith.

() The records, proceedings, and all communications of any professional assistance committee shall be deemed confidential and privileged, and shall not be available for either court, regulatory board, or administrative agency subpoena, irrespective of the provisions of T.C.A. §68-11-218 which shall not apply to professional assistance committees as defined in this act. This provision shall not prevent the subpoena of business records which are otherwise available through subpoena. Such records are not to be construed as privileged merely because they have been provided to a professional assistance committee.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect on becoming a law, the public welfare requiring it.

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